The Boeing Company is pleased to submit comments to the Washington Department of Ecology on the proposed A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM AND STATE WASTE DISCHARGE GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES for issuance on June 5th, 2002. The Boeing Company has nine sites potentially affected by this permit. These facilities employ approximately 66,900 people in a range of manufacturing, engineering and facilities activities. This permit is seen as one element in the Department's activities that are vitally important to the long-term environmental and economic health of Washington State and its citizens. This permit's importance has been reflected in the extensive cooperation of WDOE personnel with Boeing and industry representatives in its development.

The attached comments will address:
Policy issues that address the broader issues affecting the management of industrial storm water.

Technical issues and clarification that examine the specific provisions of the proposed General Storm Water permit.

Where appropriate, recommendations or interpretations of the permit language are included for Department consideration. These comments are not intended to be all-inclusive on each point. Rather, we ask the Department to consider opening discussions with appropriate technical and policy personnel, including those at Boeing, to develop workable responses that advance the state of the art of managing storm water.

Attachment 1:

Washington State Storm Water General Permit Associated with Policy Considerations

Issue: Recognition of the Uniqueness of Stormwater Discharges (in contrast to Process Waster Discharges) is Critical to the Development and Implementation of an NPDES permit for regulating storm water discharges associated with industry.

Comment: Stormwater discharges are inherently different from process water discharges. Consequently, flexibility is necessary to adapt the National Pollution Discharge Elimination System permit (NPDES) to stormwater discharges. Examples in the proposed stormwater permit requirements that are inapplicable to stormwater discharges can be easily found and include the following:

(1) in section G3 the permit addresses the halting of production as a means to control discharge of storm water. Since storm water, by definition, is not the result of -- and cannot include discharges from -- a production activity (illicit discharge) then the halting of that activity should in no way affect the quality of the storm water.

(2) in section G5 (C) (Permit Coverage Revoked), the stormwater permit can be revoked because of changed conditions that require the discharge be "reduced

or eliminated." However, the discharger has no control over the rain and cannot stop it at will.

(3) in part G5 (H) (Permit Coverage Revoked) the permit can be revoked by incorporation into a pretreatment facility – an activity associated with process wastewater treatment, not stormwater

These examples illustrate some of the difficulties of using a process water permit to control what is essentially a non-point source problem that happens to eventually end up in a discrete conveyance, –which results in the storm water being regulated by a permit designed for process /POTW discharges. Consequently, we recommend that any provision in the stormwater permit, including the ones above, which is inconsistent with the inherent nature of a stormwater discharge be modified or eliminated.

The EPA has recognized the unique issues associated with stormwater discharges in its promulgation of the Multi Sector General Permit. Indeed, the preamble to the MSGP identifies a number of inconsistencies in how the permit is applied to storm water discharges when compared to process water discharges. The "Benchmark" concept is a good example of how the EPA recognized that use of effluent standards or water quality standards as a direct indicator of storm water discharge quality is not appropriate. It is similarly inappropriate for the State to strictly adhere to NPDES permitting approaches for process water in its permit regulation of stormwater.

We ask that the State utilize the flexibility inherent in its authorization of the Federal NPDES program to implement policy, practices and a permit that recognizes storm water as a unique water management issue. In so recognizing, the State should re-evaluate the draft permit to ensure that logical constructs for a non-point source control program are the model used, not traditional process water point source approaches.

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Issue: Recognition must be given of the compliance problems caused by the off-site multi-source nature of many stormwater discharges

Comment: One significant difference between NPDES industrial process water and storm water discharges is the storm water permittee's ability to control the source and quality of the discharge. Significantly, contaminants can enter stormwater from off-site sources outside the permitee's control. This most commonly occurs when multiple dischargers share a common stormwater drainage system leading to a common discharge point. For example, the run-off from I-5 discharges into community drainage collection systems that ultimately discharges to surface water via a permittee's discharge pipe. While this makes sense for the community's management of a common stormwater discharge problem; it can also results in the potential imposition of an significant liability for the downstream permittee. In such circumstances, the permittee's sampling results may show exceedance of benchmarks or water quality standards that are not caused by the permittee, yet under the stormwater permit, the permitee may be the target for non-compliance actions.

Unfortunately, the draft permit is silent on this subject and the actions that a permittee may take to protect itself. The range of possible actions is highly complicated by the

permitting environment for storm water. While there are municipal permits for some large jurisdictions, they may be riddled with smaller jurisdictions not covered under Phase I. Up pipe dischargers may not have the appropriate SIC code to be issued an industrial storm water permit. Residential areas, streets, parks and a host of other sources are simply not covered now, or intended to be covered in the future.

The permittee needs an effective way to deal with these situations. Reliance on common law theories of nuisance and trespass is inadequate protection for the down stream permittee. Even when the permittee is willing to bear this cost the legal issues of access may preclude the ability to collect needed data. Smaller businesses may not be able to afford the costs of litigation to bring others into line. Larger businesses may not be willing to offend municipalities or others who have a strong bearing on the company's ability to do business in a particular location.

Rather, it is a mechanism for programmatic relief that the Department is requested to develop here. This relief needs to apply In the event that a stormwater discharge fails to meet water quality standards because of contaminants present in the discharge from upstream, offsite sources. The Department must provide the permittee the opportunity to notify Ecology of the true source of the problem receive an effective permit shield from enforcement and liability.

One approach would be to impose a burden on the permitee to undertake the investigation necessary to demonstrate (i) that the permitee is not responsible for the noncompliance and (ii) that offending off-site permitted and un-permitted sources are the concern. The permittee would be required to provide the Department with notice of the off-site causation of the noncompliant discharge as part of the permitee's quarterly discharge monitoring report. The permitee also would have the burden to substantiate its position by completing a full evaluation of the potential to pollute at its facility and finding that it had implemented/installed all reasonable BMPs. Further, the permittee would have to identify that potential off-site contributions to the storm water discharge exist and that they may have a potential to cause the pollution in question. Then the permitee must provide this information to the Department. The Department then could conduct a verification inspection to determine the facts. The Department also could take any necessary permitting/compliance action necessary to address the upstream violators. Finally, the Department should issue the permittee a notice that its discharges is not causing or contributing to a violation of water quality standards and that no further BMPs are required.

Another approach to this problem would be for the Department to create a "drainage" specific general permit that would in effect bring everyone on the discharge to the same level of responsibility for the discharge. WAC 173-226 provides the Department with the ability to issue general permits based on a range of parameters, including geographical or watershed boundaries. The Department could then issue permits to all dischargers, of any type, to the drainage as "potential significant sources of pollution". This would be analogous to establishing a watershed TMDL to address multiple sources in a limited discharge area. The application of these permits would quickly identify actual sources of pollutants and allow corrective actions to be taken. It might be then possible to revoke the permit and bring the specific pollutants sources under either the existing general permit or issue an individual permit.

These are just two ideas. Other alternative approaches may exist to resolving this challenge. We request that Ecology actively consider and address the issues associated with off-site multi-source discharges of stormwater.

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Issue: Provide the industrial stormwater discharger with the ability to include coverage for 1-5 acres onsite construction activities within the industrial stormwater permit.

Reference: S1C5. Construction activities as identified by 40 CFR Subpart 122.26(b)(14)(x) and Subpart 122.26(b)(15).

Comment: When EPA originally promulgated the stormwater permit for construction activities, it excluded construction sites of less than 5 acres from the permit requirement. The new Phase II rules will incorporate a second tier of permitted construction between one and five acres. Since an industrial activity already has an extensive SWPPP in place to manage storm water, it would seem a logical extension to incorporate the smaller construction activities (less than 5 acres) into the industrial permit and not require a separate permit. A combined approach would provide administrative and cost benefits to both the Department and permittee through reduction in paper work to process each new construction permit. The merger of the permits would also benefit permittee small on-site construction planning and handling of unexpected construction events (i.e.: burst pipes). We recommend that the Department include language in the permit that will allow incorporation of this concept when the new construction storm water permit is developed and implemented in phase II storm water program..
Permit integrity could be maintained by requiring the industrial permittee to:

- Include all relevant construction permit related considerations into their SWPPP,
- follow the public notice and SEPA requirements at the renewal of the General Permit. Subsequent construction between one and five acres would then be conducted under this “unified” permit.
- The permittee would provide WDOE with written notice of the start, scope and schedule for the construction activity.
- Sampling and visual monitoring requirements could be incorporated by reference from the upcoming storm water construction permit for Washington State.
- . Reporting on Construction activities would be required in the Quarterly Discharge Monitoring Reports.

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Issue: Water Quality attainment must be adaptable to account for the inherent unique characteristics of storm water discharges
Reference: S3D 2. Existing Facilities: Existing facilities that discharge to waters listed as impaired by the State under Section 303(d) of the Clean Water Act must comply with the State’s water quality standards for the named pollutant(s) at the point of

discharge. Existing facilities subject to a TMDL determination must be in compliance with the conditions of the TMDL determination and detailed implementation plan.

Comment: Stormwater discharges by their very nature are erratic in volume and contaminant loading. In contrast, Water Quality standards were designed to reflect the impact of pollutants from POTWs and from industrial process water discharges, which are by their nature more constant and more consistent discharges... Consequently, Water Quality standards assume that a few in-stream samples over the year would adequately reflect the conditions to be found at any time.

The Water Quality Standards further assumed that they would be attained even during a worst-case 7Q10 flow event – which would be the lowest flow event. Stormwater discharges are the antithesis of such an event. Under the Water Quality Standards, the impacts to Water Quality are divided into two types: acute conditions and chronic conditions. An acute condition is a 3-hour lethality standard while a chronic standard is a 72 hour standard for non-lethal impacts. Neither condition is a reasonable measure of Water Quality during a storm water event. A storm event may have some heavy loading in the early part, which will then be rapidly attenuated by additional high quality flows, which makes the average 3-hour characterization meaningless. The increased flow from stormwater also provides additional attenuation flow to reduce any chronic levels noted in the steady state condition. Storm flow impacts on water quality are thus very hard to evaluate in all but egregious situations.

Nonetheless, the proposed permit inserts storm water discharges into a water quality TMDL / 303d program as if it had the same characteristics as a process water discharge. The requirement that a discharge of storm water meet water quality standards at point of discharge using a one-hour grab presumes a constant contaminant load for the following two hours- an assumption not based on any data set currently available.

The EPA in its policy letter (Robert Perciasepe Assistant Administrator) on storm water acknowledges the problem of associating storm water discharges to water quality standards.
"In response to recent questions regarding the type of water quality-based effluent limitations that are most appropriate for National Pollutant Discharge Elimination System (NPDES) storm water permits, the Environmental Protection Agency (EPA) is adopting an interim permitting approach for regulating wet weather storm water discharges. Due to the nature of storm water discharges, and the typical lack of Information on which to base numeric water quality-based effluent limitations (expressed as concentration and mass), EPA will use an interim permitting approach for NPDES storm water permits.

The interim permitting approach uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards. "

We encourage the Department to follow the same approach as EPA.
The Department has been delegated the authority to make these judgments, and in light of this EPA guidance, the rationale to do so. The benchmark parameters are designed to demonstrate a "reasonable potential to pollute", for an intermittent

discharge. The “reasonable potential (not) to pollute” is a combination of factors such as seasonality, frequency of storm events, water levels from other uses, effectiveness of non-point control activities, and background receiving water levels. Such an approach makes more sense than applying an absolute requirement to meet a numerical standard.

The Department is encouraged to scrap the requirement for compliance with Water Quality Standards at the point of discharge for 303(d) listed waterbodies and replace it with an expanded benchmark parameter system to cover listed pollutants. The Department goes on at length in the fact sheet as to why it does not want to use Whole Effluent Toxicity testing in the storm water program. Indeed, many of the Department’s arguments as stated in the Fact Sheet on the variability of impacts and unpredictable results bolster the argument for not using water quality numeric standards. If the results for a controlled test cannot be predicted for storm water then how can the results of meeting Water Quality Standards at Point Of Discharge be adjudged to be an effective reduction in pollutant? The Department is encouraged to reconsider its position on compliance with Water Quality Standards at point of discharge. Further, the Department should reconsider allowing voluntary WET testing as a means to demonstrate that a discharger is in compliance with water quality standards, an approach recommended by the EPA interim storm water guidance.

The Department’s position that no mixing zones will be allowed on 303d listed streams fails to recognize the seasonality and flow issues linked to storm water discharges. The Water Quality Standard assumes the 7Q10 flow and uses a highly protective limit derived from laboratory testing. When it rains, it is rarely a 7Q10 event for long and the additional flow creates additional assimilative capacity. Storm water should be treated not as a constant source of pollutants, but rather as an influx of fresh assimilative capacity that may improve the quality of the aquatic environment. When flows increase those discharging to 303d listed waterbodies should be allowed a corresponding increase in their allowable discharges, in effect a flow weighted mixing zone. Rather, than attempt to implement such a complicated strategy, it is again suggested that the Department adopt benchmark discharge values for those pollutants of concern in the waterbody, which acknowledges the value of increased flow in reducing the potential to pollute.

In summary, the application of process based water quality standards utilizing an assumption of steady state discharge is an invalid approach to discharges to 303(d) listed streams. An alternative set of benchmark values recognizing the variability of storm water impact should be used. Failure to meet these alternative benchmarks would trigger increased BMP management per the proposed scheme for non-303d listed waterbodies. The Department is further encouraged to complete TMDL studies to identify key significant pollutant contributors. Those dischargers not found to be significant contributors should be instructed to follow non-303d provisions.

Attachment 2:

Technical Issues and clarifications to the General Permit for Stormwater Discharges Associated with Industrial Activities

Section S1-Permit Coverage

Reference: S1D1 (Modification of Permit Coverage) . A significant process change is any modification of the facility that would: add different pollutants to the discharge or increase the amount of pollutants in the stormwater discharge such as might result by adding a new industrial activity (SIC) that was not covered.

Comment: : The use of "might" in this definition leads to substantial uncertainly on what actually triggers a requirement to seek modification. A clearer definition might be:

Example: S1D1: A significant process change is any modification of the facility that would result in a new or additional SIC code AND would add different pollutants to the discharge or increase the amount of pollutants in storm water discharge.
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Reference: S1F Coverage for Discharges to Ground Water Stormwater: discharges to ground will be regulated as part of permit coverage for all facilities under this permit.

Comment: Discharge to ground via wells, such as class V storm water injection wells and some infiltration system is an Underground Injection Control issue. The referenced subpart wording could be misinterpreted to designate that the industrial storm water general permit is also a Underground Injection Control (UIC) permit under SDWA. Suggest this section be revised to clarify the differing roles between UIC and the Stormwater General Permit.
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Section S2- Coverage Requirements

Reference: s2B4 (Facilities with Significant Process Changes) Any facility anticipating a significant process change as identified in S1.D., Modification of Permit Coverage, must submit a completed application for coverage, marked as modification of coverage, as follows:

Comment: This section presumes that a process change will in fact create an increase in storm water pollutant discharges. As discussed in the comments on S1D1 (above) this assumption should be replaced by review of empirical data collected at the site under the sampling provisions. Recommend this section be altered to require any facility implementing significant process changes to review their sampling and visual monitoring data to determine if the change has created a significant increase in discharge volume or pollutant loading to stormwater discharges. Where such an

increase is found then a request for a modification of permit should be submitted within the required 38 days. An updated SWPPP showing actions to be taken to return discharges to within baseline values would be required, along with a schedule of implementation.
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Reference: S2F (Does Coverage Preempt government Requirements) Facilities with stormwater discharge to a storm sewer operated by any of the following municipalities shall send a copy of their application for coverage to the appropriate municipality: Comment: The MS4s listed are for Phase I municipal permits. Will permittees be required to submit applications / modifications to Phase II MS4 governmental entities when phase II rule becomes effective? The Department could resolve this problem by providing a list of permittees covered under this permit to the Phase II municipalities when issuing their permits. Those municipalities could then opt to request copies directly from the permittees.
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Section S3-Discharge Limitations

Reference: S3B2. (Discharge Prohibited) Illicit discharges are not authorized by this permit, nor does it relieve entities responsible for illicit discharges, including spills of oil or hazardous substances, from obligations under state and federal laws and regulations pertaining to those discharges.

Comment: The Stormwater Permit does not identify any allowable discharges to surface water other than stormwater. There are a number of non-stormwater discharges to storm sewer allowed in the EPA MSGP permit. Request the WDOE identify the allowable non-stormwater discharges in the permit and not characterize them as “illicit discharges”. The exclusion of non-stormwater discharges should be an exemption to S3B2. (Reference Federal Register Volume 65, No. 210, October 30, 2000, pg 64759-64760) .

Examples of permissible non-storm water discharges are:

- Ground water inflow and infiltration
- Fire system testing,
- Mists from cooling tower,
- Condensate from HVAC system,
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- Landscape sprinkler water,
- Foundation dewatering,
- Ground or stormwater collected in electric/ telephone utility vaults

A better approach would be to provide a criterion for storm water personnel to determine what does or does not constitute a permissible non-storm water discharge.

Example: Non-process and non-storm water flows will be found in many storm water collection systems. These discharges are permissible non-storm water discharges if they meet the following conditions:

- The flows are specifically exempted in the EPA's Multi Sector General Permit **(Federal Register Volume 65, No. 210, October 30, 2000, pg 64759-64760)**
- They do not originate from any function of a production process, storage activity or transportation method covered under this or other wastewater management permits.
- The flows are the result of non-contaminated water sources such as ground water, or public drinking water entering into the stormwater system through infiltration, inflow, or other legitimate uses that do not add any industrial pollutants.
- The flows may result from human activity to remove water from vaults, foundations or other non-construction related activities
- The flows may be air condensation resulting from cooling or HVAC activities such as cooling towers and air conditioners.
- Irrigation activities that do not add fertilizers above agronomic rates.

Management of these non-stormwater discharges will follow guidelines specified in the MGSP (**Federal Register Volume 65, No. 210, October 30, 2000,**. pg 64763).
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***Reference**: S3D Ecology will not require monitoring for fecal coliform if the Permittee can document that there is no potential source of fecal coliform from any of their industrial activities.

Comment: Fecal coliform originates from a range of sources, some related to industrial activities, some deposited by outside forces (literally). Any industrial facility can expect some level of fecal coliform in its discharge due to birds, wild and domestic animals. Ecology should make clear the distinction between industrial and "incidental" fecal coliform sources. Incidental fecal coliform sources should be clearly stated as not constituting an industrial activity. As such it should not be considered as a "source of fecal coliform".
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Reference: S3D2 (Discharges into Impaired Water Bodies). If a Permittee discharging to waters listed under 303(d) fails to comply with the effluent limits above, the compliance schedule below immediately becomes applicable and shall be considered the applicable interim effluent limitations until compliance with water quality standards is achieved or a TMDL is completed.
Comment: See prior comments on the policy concerns with this approach to stormwater discharges into 303(d) listed waters. Also the permit fails to identify the criteria for exiting the compliance schedule (table) if effluent limits for impaired waters are being achieved. The current wording implies that once a single exceedance of effluent limit occurs that the entire table must be followed on a year by year basis, without regard to if the permittee has re-attained effluent standards. A specific exit mechanism needs to be incorporated into the permit language.

Reference: S3E1 (Mixing Zone Descriptions-) All appropriate best management practices established for stormwater pollutant control has been applied to the discharge
Comment: See prior policy discussion on the need and appropriateness of a mixing zone for discharges of stormwater into 303(d) listed waters. Also, WAC 173-201

requires that AKART be instituted prior to granting a mixing zone. Does WDOE intend for this statement to equate all appropriate best management practices to AKART. Please clarify.
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Reference: S3F. General Prohibitions
All facilities must manage stormwater discharges to prevent the discharge of :
1. Petroleum products as identified by an oil sheen or
2. Floating materials

Comment: Guidance on what constitutes a floating material by size. In practical application, the permittee will need to use screens or other techniques to minimize escape of floating material. Determining the screen size is based on size of material to be captured.
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Section S4- Monitoring Requirements

Reference: S4 Stormwater must be sampled according to the instructions below. The Permittee is not required to sample outside of regular business hours but should make an effort to make sure that this does not result in a failure to capture a storm event during an entire quarter.

Comment: Regular business hours is an ambiguous statement that needs clarification. First in consideration is safety for the sampling personnel. Sampling during periods of darkness is an unnecessarily dangerous activity. Second, Sampling on a dark rainy night is prone to create additional errors in sampling as darkness interferes with sampling protocols. Third a visual inspection cannot be properly conducted simultaneously with a nighttime sampling event as the discharge cannot be clearly seen in many cases. Fourth, sampling when production activity is minimal, such as weekends or night shifts, does not provide a worst-case representation of the storm water discharge. For all these reasons a new sampling time frame is needed.

Example: The permittee is not required to sample outside of regular business hours and in no case during hours of darkness. Regular business hours are those time frames when the facility is engaged in its primary production process, but; does not include additional shifts or weekends when partial staffing is at the site primarily for maintenance and incidental production activities.

Reference: S4-1. All samples will be grab samples taken within the first hour of discharge.

Comment: The requirement to take a sample within one hour of “first discharge” is both unreasonable and unnecessary. It is unreasonable for those facilities with multiple discharges to successfully sample and visually monitor more than one or two outfalls per storm event. The pressure created to speed up sampling to cover more outfalls will inevitably lead to unsafe practices and worker injury. Our facilities have multiple discharges, two of them with over 20 discharges each, that may all require monitoring if they do not qualify for representative sampling. Use of automated

sampling equipment is an expensive proposition for installation and maintenance with the appropriate samplers costing over $10,000 per copy plus installation construction. Further, it is not clear that automated systems are even available presently, which meet the requirements (S4.E Sampling and Analytical Procedure)
It is unnecessary as the determination of water quality is based on a 3-hour exposure test (see Ecology Fact Sheet), which implies that a sample can be taken at any time during the first three hours to represent the test protocol results. The assumption that the first flush of water from a system is the most polluted is unsupported. Many system have multiple discharge sources, oil / water separators, catch basins and other artifacts that will delay the arrival of various streams of water, along with their pollutant load. This could result in multiple scenarios of pollutant loading from the assumed front loaded pattern to include cyclical patterns, back loaded, even loaded and a range of other options. Even then these may change based on rainfall dispersion, time between storms, industrial activities and season of the year. Hence, the mandate for a "grab in first hour" is rational only in its regulatory simplicity, not in its ability to aid in evaluating a "reasonable potential to pollute". Hence recommend that up to 3 hours be allowed for collection of samples.
Additionally, permittees on complex discharge system should have the ability to characterize the pollutant-loading. With complex discharge systems a "custom" sampling protocol may be more effective in evaluating the actual impact on the receiving waters.

Example: S4-1. Sampling is allowed as either 1) a grab sample collected within the first 3 hours of the start of discharge from the storm event or 2) Composite or individual samplings that are representative of the pollutant concentration and flow over time. Composite samples collection period shall not be less than 6 or more than 24 hours. At least two composite samples will be collected in the first 3 hours. A permittee may petition the Department for another sampling regime based on initial results from either sampling protocol 1 or 2. Lab results and sampler profiles from option 2 will be retained for 5 years from the event and provided to the Department on request.

Reference: S4-3. The storm event sampled must be at least 0.1 inches of rain in a 24-hour period.
Comment: Related to S4-1 (above) this statement can be interpreted a couple different ways. The conservative reading would be that we wait for .1 inches of rain and then go forth and do our sampling. The liberal reading would be that we sample first and then wait to see if we get the requisite amount of rain. The conservative reading provides the most cost effective means for triggering a sampling event. A review of weather patterns in Puget Sound show that many storms do not produce the required .1 inch in a 24-hour period. Other parts of Washington State have there own unique rainfall patterns that will result in many false starts if they have to sample each time they might get a .1 inch rainfall. S4-3 also does not address sampling when dealing with snowmelt. Is sampling required after .1 inch of snow, when .1 inches of snow has melted or must the water content be calculated and .1 inch of rain equivalent be considered?
Finally, S5D states that samples must be reported when using test procedures specified by S4 then shall include in calculations.. We contend that the .1 inch

requirement in this section (S4) is a test procedure specification and that readings taken with below .1 inches of rain should not be reported as it does not qualify as a storm event? For example, Turbidity, dissolved oxygen and pH can be sampled real time and logged in. In some cases samples taken may go to lab and be analyzed before people realize the rain event did not qualify.

Example Alternative: S4-3 The sampling activities must begin once a storm has deposited at least .1 inch of rain in a 24 hour period and an appreciable (<10%) increase in flow at the discharge has been determined. Sampling for snowfall events will occur after either 1) .1 inch of rain equivalent has fallen and is observed to melt and runoff on contact or 2) When outfall discharge is observed to increase at least 10% due to melting of snow pack. Sampling data for non-qualifying storm events will be discarded.
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Reference: S4.4 . The storm event sampled must be preceded by at least 24-hours of no discharge.
Comment: The term discharge should be replaced with rainfall or snowmelt. Some discharge pipes will have continuous discharges due to ground water infiltration or permissible non-storm water discharges. Hence, they would never attain a "no-discharge" status on which to base the 24-hour trigger clause.

Reference: S4-2. All samples will be taken as close to the point of discharge as reasonably practical
Comment: Practical experience has shown that the actual outfall may be inaccessible due to a number of reasons, such as high tides, diffuser designs, and hazardous locations. In a few cases there is no access to the line at all due to its design, such as closed lines from tall roofs where pressure head is a problem. Request provisions be incorporated to allow for "upstream" sampling such as in-line manhole(s) or discharge points to the drainage system. The provision should allow for calculation of discharge based on values from the combined flows when multiple sampling points are involved. The permittee should document the need for alternative sampling points, procedures and calculation methods used in the SWPPP.
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Reference: S4A1. Visual Monitoring The visual inspection shall be conducted by personnel named in the SWPPP to verify

Comment: Clarify that the term "personnel named" can be either by individual or by position(s). The variable and unpredictable nature of rainfall makes scheduling a specific person for these activities virtually impossible.

Reference: S4A-1. Visual Monitoring . All discrete outfalls shall receive visual inspection. Inspection shall include observations for the presence of floating materials, suspended solids, oil and grease, visible sheen, discoloration, turbidity, odor, etc. in the stormwater discharge(s).

Comment: As noted in comments on S4-2 (above) instances exist in which visual inspectionsampling cannot be conducted at the point of discharge. An analogous

situation occurs when the industry must sample at the point of discharge to a MS4 (S7-B). In either case manholes are the most likely alternative inspection location in these cases. Many of these manholes are at catch basins, oil / water separators and similar storm water structures. The nature of these locations precludes a meaningful "visual inspection" as floating debris and oil sheen are a normal part of some of these structures functions. . The Departments development of sampling protocols should included consideration of the issues surrounding confined space entry and difficult access.
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References: S4A1 and S4-5: Visual Monitoring and Representative Sampling

Comment: When a representative sampling plan is established only certain outfalls will be sampled and visually inspected. Those outfalls legitimately not sampled also would not be subject to visual inspection, as the representative outfall would suffice for all those in the plan. Those outfalls not listed as representative may be visually inspected during other storm events when sampling is not in progress.

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Reference: S4D Facilities Discharging to 303(d) Listed Waterbodies or Subject to TMDL Determination: Permittees may suspend monitoring for a listed parameter if eight consecutive samples fail to detect the presence of the listed pollutant.
Comment: The presence of a listed parameter is not the same as an exceedance of a listed parameter's water quality standard. In the equivalent statement on benchmarks "eight quarters where reported values for all four parameters are equal to or less than the benchmark value" is used as a standard. Discharges of 303d listed parameters should subscribe to the same level of scrutiny. Further, as written, a permittee could never come into compliance as pH is always present in samples. The compliance objective is to demonstrate that no reasonable potential to violate water quality standards exists. A permittee that has 8 consecutive samples within acceptable parameters would certainly seem to have demonstrated that they are do not have this "reasonable potential" to exceed a water quality standard
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Section S5- Reporting and Recordkeeping

Reference S4-D. Additional Monitoring by the Permittee: If the Permittee monitors any pollutant more frequently than required by this permit using test procedures specified by Condition S4. of this permit, then the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Permittee's DMR.
Comment: S5D states that samples must be reported when using test procedures specified by S4 then shall include in calculations.. We contend that the .1 inch requirement in this section (S4) is a test procedure specification and that readings taken with below .1 inches of rain should not be reported as it does not qualify as a storm event. For example, Turbidity, dissolved oxygen and pH can be sampled real time and logged in before people realize the rain event did not qualify. Inclusion of this data will create a false impression of the discharge from the permittees system when compared to those discharges meeting the 0.10 inch sampling requirment. (please see discussion on S4-3 for additional concerns.) G11. ADDITIONAL MONITORING would

only apply if the Department modified the permit or incorporated a new sampling protocol under order.
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Reference: S5-E3. Submit a detailed written report to Ecology within five [5] days unless additional time is authorized by Ecology. The report shall contain a description of the noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated

Comment: The new permit requires a 5-day written report for a non-compliance condition. It is requesting that the time for submitting a written report concerning a non-compliance condition be extended to 15 days. This would correspond with the hazardous waste regulation reporting for hazardous material releases. The additional time would provide an opportunity to 1) identify the problem through inspections as prescribed in S3D-2 (table) and 2) develop a preliminary plan to respond as prescribed in S9A-4. Allowing the extra 9 days will convert the written report from a "notification" to a plan of action document. Eliminating back and forth paperwork caused by premature notification will save the Department and permittee from needless waste of valuable personnel resources. It will also verify that the permittee is taking the prescribed actions to deal with the problem.
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Section S7- Compliance with Standards

Reference: S7B . Where a mixing zone is not allowed, stormwater discharges must comply with surface water quality standards at the point of discharge.
1. The point of discharge for discharges to a municipal storm sewer is where the stormwater enters the storm sewer system.
Comment: See prior policy discussion on mixing zones for stormwater discharges into 303(d) listed waterbodies. Also, it is an unreasonable burden to require an industrial discharger to meet a water quality standard for discharge to a MS4 when the MS4 is under no practical obligation to meet those water quality standards. The disconnect occurs between the two permits in force. The industrial permit has the provisions of AKART to which is further tied an expectation that BMPs will achieve water quality standards. The municipal permit is deliberately designed to use a lesser standard – maximum extent practicable, which may or may not meet water quality standards. Hence, industrial dischargers are meeting a much higher standard discharging into a MS4 than that imposed on the MS4 by their permits. This is further complicated by MS4s that do not have municipal storm water permits and are hence not under any direct permit requirement to meet any standard.

A second inconsistency with Department policy is the differentiation between essentially identical situations. Current TMDL policy allows a discharger to a tributary stream as though it were a non-303d stream, even if that stream discharges into a 303d listed waterbody. The exact same discharger would be required to meet water quality standards at the point of discharge into an MS4, essentially a tributary stream, if that MS4 discharges to a 303d listed waterbody.

Possible Alternative: S7B . Where a mixing zone is not allowed in the receiving waterbody for a MS4, stormwater discharges from industry must comply with the same standards applied to the MS4 at the point of discharge.

1. The point of discharge for discharges to a municipal storm sewer is where the stormwater

enters the storm sewer system

Reference: S7C. Stormwater treatment systems must be fully functional for all storm situations that do not exceed the water quality design storm or the water quality design flow rate, whichever is applicable.

Comment: Recommend the Department Include a statement that the permittee is exempt from conditions of S7c and S5E for events involving exceedances of design storm. Current wording is confusing if not contradictory.

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Section S9- SWPPP for industrial facilities

Reference: S9A1 Illicit Discharges:
The SWPPP shall include measures to identify and eliminate ----

Comment: Please see comments on section S3B2 above on permissible non-stormwater discharges.

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Reference: S9.A4 . Modifications:
The Permittee shall provide a schedule in the SWPPP for implementation of any modifications that are necessary because of a notice from Ecology, facility changes, or self-inspection. Unless otherwise authorized by Ecology in writing, a schedule for implementation must be completed and entered into the SWPPP within 30 days of a notice/determination of needed modification. BMPs identified in the modification plan must be implemented with due diligence. Unless otherwise authorized by Ecology in writing, non-capital BMPs shall be completed within two weeks of completing the plan and capital BMPs within six months. Modifications will comply with Special Condition S9.A.5. below. Complying with this “Modifications” provision does not limit the potential liability for enforcement action where the Permittee has failed to implement required BMPs or where stormwater discharges violate water quality standards.

Comment 1: Request reinstate the time frames specified in the original (1992) WDOE Stormwater permit of 18 months into the new permit. The timeframe specified in the draft permit of six months is not sufficient to perform engineering study, determine alternatives, decide on an action, obtain funding for the action, prepare job scope, bid

specification, bidding process, obtain necessary permits, selection of a contractor, obtain equipment, and complete construction. The provisions to request a time extension from WDOE should remain in the new permit

Comment 2: Please verify that the current permit allows 30 days to plan a modification and 2 additional weeks to implement? Would not the due diligence clause in the beginning of this section be a more appropriate measure to allow for wide range of issues that can be incurred in managing storm water operational and structural controls? A more workable alternative, obtaining the same affect, is to have the permittee document in the SWPPP that a non-capital BMP is being implemented that will take longer than the allocated two weeks. and is estimated to be completed by a specific date. The permittee would include a brief description of the project, why it is being implemented, and a schedule. On completion the permittee will annotate the original entry. Exchanging paperwork with WDOE will not speed up the work, change its outcome or increase protection of the environment. What it will do is increase transaction costs for both the Department and permittee, wasting valuable resources on this paperwork.

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Reference: S9A5b. Existing permitted facilities that comply with standards are not required to redo their SWPPP and BMPs to incorporate changes when a new edition of the stormwater management manual is released. However, existing facilities shall apply the applicable technical standards and BMPs as found in the most recent published edition of the SWMM, or other equivalent manuals, that are available when updating their SWPPP to accommodate changes at their facility or when additional BMPs are required to maintain compliance with permit conditions.

Comment: Selection of BMPs for controlling storm water discharges should be more a matter of permittee preference than a requirement to use a specific manual. Previous permits were premised on attaining acceptable discharge levels based on use of BMPs. When this was the case it was reasonable for WDOE to require specific BMPs be used. Now that the emphasis has shifted to an outcome based (sampling) approach in this proposed permit, it should be at the choice of the permittee to determine which BMP's to use from any source to meet the specified benchmark or WATER QUALITY STANDARDS values.

Alternative Example: S9A5b: Existing permitted facilities that comply with standards are not required to redo their SWPPP and BMPs. Those facilities seeking to meet standards through increased BMPs application are encouraged to employ the latest version of the Storm Water Technical Manual as providing a presumption of the best available BMPs. Permittees are encouraged to submit innovative BMPs (operational, source or treatment) to the Department for consideration for inclusion in future manuals.

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Reference: S9-6b1. Site Map: The site map must be drawn to an identified scale or include relative distances between significant structures and drainage systems. It must provide identifiers (names) of significant features and be of sufficient size and detail to identify the following: The site map will show the stormwater drainage and discharge structures, an outline of the stormwater drainage areas for each stormwater discharge point (including discharges to ground water), paved areas and buildings, areas of pollutant contact (actual or potential), surface water locations (including wetlands and

drainage ditches), areas of existing and potential soil erosion and vehicle service areas;

Comment: Sadly, recent events have made the publication of such a map in a publicly available document a significant security issue. This map would provide substantial information to infiltrators on plant layout, access routes and the location of some highly vulnerable and dangerous activities on an industrial site (i.e.: hazardous material storage, propane tanks). A recent Federal rule was substantially modified to prevent the release of similar information to the public. Site maps should be excluded from publicly released versions of the SWPPP. The map itself should be retained on site and made accessible only to qualified Department personnel with a need to know. When the public identifies a specific valid need to know information about the site, its release must be agreed to by the permittee.
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Reference S9B1d: Material List:

Comment: The short narrative required in the inventory need only address only each type of material, not a detailed discussion of the impact of each individual material item. As written this requirement is an egregious workload requirement to document potentially thousands of "potential sources" . This would at most be applicable as a one-time requirement to a new facility attempting to identify its sources. Existing facilities will in the course of maintaining their SWPPP address potential sources of pollutants.

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Reference: S9B3a (iv) and (v) Concerning minimum sets of BMPs that must be included in the SWPPP.

Comment: Please specify that these requirements may, where applicable, be incorporated by reference. The referenced material should not be required to be submitted to the Department with the SWPPP unless specifically requested.
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Reference: S9B5. Other BMPs: Nothing in Special Condition S9. of this permit is intended to preclude the application of innovative treatment, source control, reduction or recycle, or operational BMPs beyond those identified in Ecology's SWMM. Additional BMPs beyond those identified in Ecology's SWMM could be necessary to achieve compliance with standards. However, treatment BMPs that include the addition of chemicals to provide treatment must be approved by Ecology before implementation.

Comment: This section is amplified on page 37 of the associated fact sheet. In both cases the implication is that these are for "BMPs beyond those identified in Ecology's SWMM." This is an overly restrictive implementation of "other BMPs" in that permittees may want to use an "other" in lieu of rather than in addition to a SWMM BMP. It may also be reasonable to use a BMP that is less effective than one proposed in the BMP as long as it meets the goal of attaining Benchmark or water quality standards values. (Also, see S9A5b comments) A statement should be included in

the fact sheet that delineates the differential between using a SWMM BMP and an "other / innovative" BMP.
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Reference: Definitions:

Comment: Definitions in the permit can have substantial impact on its implementation. Request the Department evaluate the following definitions and make revisions as noted.

1. Discharge targets:. This is a carry over from earlier efforts to obtain engineering data. It is now a moot point with benchmarks

2. Equivalent BMP: – Please clarify definition see comments on S9B5 above and discussion in WDOE's Fact Sheet

3. Existing Facility: Definition is circular. Please describe what is intended by the term "facility" in this context.

4. Illicit Discharge- Please see above discussion on permissible discharges related to section S9A1